IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 805 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJKUMAR @ SATMOHANKUMAR BHIMLAPRASAD
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 805 of 1994
MR PM VYAS for Petitioner No. 1
MR KG SHETH, Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The appellant herein was original accused in Sessions Case No.114 of 1989 before Additional Sessions Judge, Bharuch. On being convicted for the offence punishable under Section 302 of IPC by the judgement and order dated July 30, 1994, he has preferred this appeal.

2. The dead body of Lalpratap Ramkishore Yadav of Village Lachharas was found in his house on April 1, 1989 with severe injuries on head. His son, Bhanupratap Lalpratap Yadav, who had gone to Village Sisode noticed the dead body on his return to Lachharas. He, therefore, went to Rajpipla Police Station and lodged an F.I.R., on basis of which an offence came to be registered and investigation started. The Investigating Agency, having found sufficient evidence to connect the appellant with the offence, filed charge-sheet in the Court of Judicial Magistrate First Class, Rajpipla, District Bharuch who committed the case to Sessions Court after following procedure and Sessions Case No.114 of 1989 came to be registered.

2.1 The learned Additional Sessions Judge framed the charge against the accused at Exh.8 for the offence of murder of Lalpratap Ramkishore Yadav. The accused appellant pleaded not guilty to the charge and claimed to be tried. The learned Additional Sessions Judge, on considering the evidence, came to the conclusion that the charge against the appellant accused was proved and, therefore, recorded his conviction and sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs.250/-, in default, to undergo simple imprisonment for one month, by virtue of the impugned judgement and order dated July 30, 1994. Aggrieved by the said judgement and order present appeal is preferred.

3. The learned Counsel for the appellant, Mr.P.M.Vyas has taken us through the record and proceedings. He submitted that the evidence in the case is in the nature of circumstantial evidence and that there is no eye-witness of the incident. According to him, the witness Sureshbhai Motibhai (Exh.22) and Ratilal Ranchodbhai Patel (Exh.31) are the witnesses who deposed that they had seen the appellant splitting wood just outside the house of the deceased on the day of the incident. They had also noticed the appellant entering the house and locking the house from inside. They claim to have seen the appellant coming out of the house, washing his clothes, again entering the house and then leaving the house after changing the clothes. Thereafter, they learnt about the dead body of the

deceased found in injured condition. These two witnesses identified the muddamal axe as the axe with which the appellant was splitting the wood on the day of the incident. Mr.Vyas submitted that this is the only evidence against his appellant and learned Additional Sessions Judge has, by accepting the same, convicted the appellant for life-imprisonment. According to Mr.Vyas, the evidence is not reliable as it does not complete the chain of circumstances to link the appellant accused with the offence. He further urged that the appeal may be allowed and the appellant may be acquitted of the charge by setting aside the judgement and order impugned herein.

4. Mr.K.G.Sheth, learned APP opposed the appeal. According to him, apart from the evidence of Sureshbhai Motibhai, there is evidence of the complainant, who said that he had left the appellant at the house of the deceased. There is no reason to disbelieve these witnesses and, therefore, the appeal may be dismissed.

5. We have gone through the record and proceedings and given it a close scrutiny in light of the contentions raised before us.

6. As rightly stated by learned Counsel Mr.Vyas, the case mainly depends on the deposition of Sureshbhai Motibhai (Exh.22) and Ratilal Ranchodbhai (Exh.31).

7. It transpires from the evidence that deceased Lalpratap Ramkishore Yadav was staying at Lachharas in his house alone. On the day of the incident, as per the say of his son, complainant Bhanupratap Lalpratap, the appellant was left at the house of the deceased.

8. The deposition of Sureshbhai Motibhai (Exh.22), if perused, indicates that he was sitting on a swing on the day of the incident and that he had seen the appellant splitting wood with an axe. He had also noticed the appellant entering the house of Lalpratap and then closing the door from inside. He came out after some time and washed his clothes. The appellant again entered the house of Lalpratap and came out after changing the clothes, namely, pant and bush-shirt. The witness noticed that the appellant was in a frightened state of mind. Thereafter, the appellant went away. The witness has identified the axe as well as the appellant. The witness says that one Dhayaram, who was formerly employed by Lalpratap, had come to him in the evening and enquired about his boss i.e. the deceased and the witness replied he did not know anything. This witness has been cross-examined. Mainly on aspects of

topography, he admits that axe is a common implement kept by agriculturists. He says that he had seen the appellant splitting wood from his house, which is nearly 100ft. away from the spot of splitting wood, and had not noticed any specific identification marks on the axe. He denies that he had not seen the appellant splitting wood and he had not seen the appellant in a frightened state of mind and he had not seen the appellant going away wearing muddamal articles No.9 and 10, bush-shirt and trousers. He says that he may not be able to identify the appellant, if he is made to stand with 10-15 people.

9. Witness Ratilal Ranchodbhai (Exh.31) is also a neighbour of deceased Lalpratap. He says that he was sitting on the otta of Suresbhai and they were chitchatting. That time, the appellant was splitting wood. He had seen the appellant entering the house of the deceased and locking the door from inside. He had also seen the appellant coming out of the house after about 10-15 minutes and washing his clothes and that time the appellant was wearing lungi, which he was washing. He noticed that the appellant again entered the house, changed the clothes and left. The appellant had taken the axe inside the house. The witness identified the appellant as well as the muddamal article No.8, axe and articles No.9 and 10, bush-shirt and trousers. The witness is cross-examined. He states that he may not be able to give the details of the tenure of employment of various servants employed by Lalpratap, nor can he identify all the servants. He also admits that since last five years, he has been having diminished vision and he is able to see upto a distance of 20-30 ft. Thereafter his vision gets affected. He denies various suggestions put during the cross-examination regarding Bhanupratap and others. An attempt is made to indicate by putting questions during cross-examination about the sitting position of the witness to show that the witness could not have seen the appellant splitting wood. However, the witness denied that suggestion of having not seen the appellant splitting the wood.

10. Thus, there is oral evidence of these two witnesses, who assertively speak of having seen the appellant splitting the wood with an axe, entering the house of the deceased Lalpratap, coming out of the house, washing the clothes, again entering the house and then leaving the house in a frightened condition. The presence of the appellant is also established by the deposition of Bhanupratap, who says he had left of the appellant at the house of the deceased on the day of the incident.

11. To support the above deposition, there is evidence in form of the report of the F.S.L. The Serologist's report indicates that the bedsheet, bush-shirt and pillow-cover were stained with human blood of Group "A". The bedsheet was the bedsheet on which the dead body of the deceased was found, the bush-shirt was the bush-shirt, which was borne by the appellant and both of them carry blood of Group "A". This completes the chain to link the appellant with the offence.

12. It was not disputed that the death of the deceased was not a homicide. However, there is evidence of Dr.Joseph (Exh.18) and Post-mortem Note (Exh.19), which indicate that there were head injuries found on the dead body which had caused fracture on the left frontal and the left parietal bones. The brain tissues were torn, contused and lacerated and the cause of the death was head injury. Dr.Joseph had deposed that such injuries were possible with muddamal and sufficient enough to cause death in the ordinary course of nature.

13. Taken into consideration all these aspects of the evidence collectively, there is not even an iota of doubt about the complicity of the appellant with murder of Lalpratap Ramkishore Yadav of Lachharas. We find no reason to interfere with the judgement and order impugned herein. The appeal, therefore, must fail. The appeal stands dismissed. The judgement and order impugned herein passed by the learned Additional Sessions Judge, Bharuch in Sessions Case No.114 of 1989 is hereby confirmed.

2-5-2002 (M.C. Patel, J.)

(A. L. Dave, J.)
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